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BEFORE THE HIGH COURT OF JUDICATURE AT JABALPUR.

W.P.NO. 1094/2000

PETITIONERS: 1. Union of India, through its Secretary Ministry of Railways, Rail Bhwan , NewDelhi

2. The General Manager, South Eastern Railway Garden Reach, Calcutta.

3. The Chief Engineer, South Eastern Railway, Garden Reach, Calcutta.

4. The Senior D.E.N., South Eastern Railways Bilaspur, Distt. Bilaspur (MP)

V/s

RESPONDENTS: 1. The Central Administrative Tribunal, Bench at Jabalpur.

2. Shri B.P.Singh, S/o Shri K.L.Singh, 52 yrs, Ex. P.W.I, Bhilai, Marshalling Yard, South Eastern Railway, Charoda,P.O.Bhilai Marshalling Yard, Distt. Durg.

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA.

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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR
(Division Bench)

CORAM : Hon'ble Shri A.K. Patnaik, CJ
& Hon'ble Shri S.K. Agnihotri, J.

WRIT PETITION NO. 1094 OF 2000

Union of India & Others

Versus

The Central Administrative Tribunal, Jabalpur & Another

Present : Mr. Vinay Harit, Sr. Advocate with Mr. Ashok Swarnkar, learned counsel for the petitioner.

Mr. U.N.S. Deo, with Mr. Pankaj Shrivatava, learned counsel for respondent No.2.

ORDER
(16th of June 2005)

The following Order of the Court was passed by **A.K. Patnaik, CJ:**

In this writ petition under Articles 226/227 of the Constitution of India, the petitioners have challenged the order dated 22.09.1999 passed by the Central Administrative Tribunal, Jabalpur Bench, Jabalpur in Original Application No.456 of 1991.

2. The facts briefly are that the respondent No.2 was working as a Permanent Way Inspector under the South Eastern Railways. A departmental enquiry was initiated against the respondent No.2. In the said departmental enquiry two articles of charge were framed against respondent No.2. The two articles of charge are as follows:

> "Article-I: That the said Sri B.P.Singh while functioning as PWI/MBY during 1986 had accepted 989 pcs. Of B.G. Sal wooden sleepers / special from the associates of M/s. M.P. Export Corp. Ltd. without Booking Instructions of

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Dy.CE/SLC/GRC or any instruction from his superior officers.

By the above act Sri Singh failed to main absolute integrity, devotion to duty and acted in a manner which is unbecoming of a Rly. servant and there by violated rule 3(i), (ii) & (iii) of the RSC Rules, 1966.

Article-II: That during the aforesaid period and while functioning in the aforesaid office, the said Sri B.P. Singh has granted 12/EG-15 (Acknowledgment) for the aforesaid 989 Pcs. Of B.G. Sal wooden sleepers / specials quoting 6 Bls meant for other consignees and one for PWI/BMY. On the strength of those 13 EG-15, the Contractor has claimed bill of Rs.10,09,305.20P to Dy. CE/SLC/GRC. He granted 13 Nos. clear EG-15 for 989 pcs. Of sleepers / specials quoting 6 fake B.I. Nos. meant for some other units. The B.I. No.303 was meant for PWI/BMY and the sleepers were passed at Depot No.371 of Pendra Road, but Sri Sngh received the materials from other depots of Dhamtari & Raipur. Thus, Sri Singh has failed to main absolute integrity, devotion to duty and acted in a manner which is unbecoming of a Rly. Servant as required under rule 3(I)(i),(ii) & (iii) of the RSC Rules, 1966."

The Enquiry Officer recorded findings in the enquiry report that the two articles of charge were proved against respondent No.2 and the said findings were accepted by the Disciplinary Authority and the respondent No.2 was removed from service by order dated 25.10.1989 of the disciplinary authority with the observation that he was a person of doubtful integrity and was not a fit person to be retained in service. Aggrieved by the said order of removal, the respondent No.2 preferred an appeal before the appellate authority. But before the appeal was decided, respondent No.2 filed Original Application No.456 of 1999 before the Central Administrative Tribunal, Jabalpur Bench, Jabalpur. The Tribunal after hearing the parties disposed of the Original Application by modifying the order of removal to an order of compulsory retirement with effect from the

date from which the respondent No.2 was removed from service. Paragraphs 5 & 6 of the order dated 22.09.1999 of the Tribunal in the said O.A.No.456 of 1991 which contain the reasons for modifying the order of removal to one of the compulsory retirement are quoted herein below:

> "5. We have duly considered the submission of both sides and minutely perused the records. It is true that the applicant was posted as Permanent Way Inspector in Bhilliai Marshalling Yard where he had to see to the maintenance of Railway tracks. The applicant was required materials / stocks which were necessary for the maintenance. The said materials were supplied to the Railways by the M.P. Export Corporation Limited, Bhopal. It is alleged that during the period 1986-87, the applicant had received materials / stock, which on check was found to be short. The respondents in their reply themselves admit that the responsibility was not that of the applicant who was the P.W.I. but the Senior D.E.N, D.E.N. and the A.E.N. were equally responsible and they were aware of the problems of the Bhillai Marshalling Yard. If it be so, the materials supplied to the Railways ought to have been checked by the superior officers / authorities as well because the bills are to be ultimately passed through them. No doubt the misappropriation of materials might have been due to lack of devotion of duty on the part of the applicant as alleged, however, the fact remains that there was negligence on the part of the superior officers like the Sr. DEN and AEN who were not taken to task by the respondent – department for the reasons best known to them. Only the applicant was circled out and held responsible for the government loss.
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> 6. In view of what has been discussed above and after hearing the counsel for both parties and having perused the records on file, we find that the applicant was not the sole person whose negligence attributed to the acceptance of sub standard material but some senior officers were also responsible and they were spared for the reasons best

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known to the official respondents. We also find that for shortage of 251 sleepers, utilized in track repairs, four junior PWIs who were also responsible for accounting & transaction were also spared by the official. In the circumstances, the punishment imposed upon the applicant is considered too harsh and we are of the opinion that the same should be modified. In this connection we also rely on the decision of the Hon'ble Supreme Court in the case of B.C. Chaturvedi vs. Union of India, (1995) 6 SCC 749. We accordingly dispose of this application and modify the impugned punishment of removal from service to that of compulsory retirement w.e.f. the date from which he was removed from service. The respondents shall take all necessary measures as required under the Rules for making payment of pensionary benefits to the applicant to which he will be entitled to within six months from today."

3. Mr. Vinay Harit, Sr. Advocate appearing for the petitioners submitted that the two charges against the respondent No.2 were serious in nature and had been proved in the departmental enquiry. He vehemently argued that since it has been established in the departmental enquiry that the respondent No.2 had failed to maintain absolute integrity in the discharge of his duty and has also misappropriated 251 numbers of New Wooden Crossings Sleepers and thereby put the Railway to heavy financial loss, the order of removal passed by the disciplinary authority was proportionate to the gravity of misconduct and should not have been interfered with by the Tribunal in the impugned order. He submitted that the Supreme Court has held in **B.C. Chaturvedi vs. Union of India & Others** reported in **(1995) 6 SCC 749** that it is only when the Tribunal finds that the punishment imposed by the disciplinary authority is shocking, it will interfere with the punishment and remit the matter back to the disciplinary authority or the appellate authority to reconsider the punishment to be imposed on the delinquent and only in exceptional and rare cases the Tribunal can impose a lesser punishment. He also relied on the decisions of the Supreme Court in **Union of India & Another vs. G. Ganayutham** reported in **AIR 1997 SC 3387** as well as **Canara Bank**

vs. V.K. Awasthy reported in **2005 AIR SCW 2005** for the proposition that the Tribunal will not interfere with the order of punishment unless the same is wholly irrational or illegal. He submitted that in this case, the Tribunal while reducing the punishment from one of removal to compulsory retirement has recorded some findings of negligence against some superior officers and junior officers which are not based on any material in the records of the departmental enquiry.

4. Mr. U.N.S. Deo, learned counsel appearing for respondent No.2, on the other hand, submitted that the contention of the petitioners before the Tribunal inter alia was that the respondent No.2 was posted as Permanent Way Inspector in Bhillai Marshalling Yard where he was to see the maintenance of railway tracks and he was not the sole person who was responsible for the receipt or loss of materials in the railway yard and the Sr. D.E.N., D.E.N. and A.E.N.and other junior PWIS were equally responsible and yet respondent No.2 was singled out for the differential treatment and proceeded against in the departmental enquiry and finally removed from the service. He submitted that the Tribunal was therefore right in coming to the conclusion that the respondent No.2 was not the sole person responsible for accepting substandard materials or for the shortage of 251 sleepers and in reducing the punishment from one of removal from service to one of compulsory retirement. He also relied on the aforesaid decision of Supreme Court in **B.C. Chaturvedi** (supra) wherein it has been held that if the punishment imposed by the disciplinary authority shocks the judicial conscience, the Tribunal can interfere with the same and in some cases can also reduce the punishment to shorten the litigation. He cited the decision of the Supreme Court in **Kailash Nath Gupta vs. Enquiry Officer (R.K. Rai), Allahabad Bank & Others** reported in **(2003) 9 SCC 480** wherein it has been held that if relevant factors are not taken note of while determining the quantum of punishment, the Court can direct reconsideration or in an appropriate case to shorten the litigation indicate the punishment to be awarded. He also cited the decision of Supreme Court in **Pritam Singh vs. Union of India & Others** reported in **2004 AIR SCW 5391**, wherein the Supreme Court interfered with the order of punishment of compulsory retirement as the railway employee had put in 31 years of long service without any blemish.

He submitted that in the present case, the respondent No.2 had put in 29 years of unblemished service and he should not have been removed from service and the order of the Tribunal reducing the punishment of removal to one of compulsory retirement was justified. Finally, he submitted that before the Tribunal, respondent No.2 had raised various other grounds such as; violation of principles of natural justice and irregularities in the enquiry, but these grounds have not been considered by the Tribunal in the impugned order. To a query by the Court as to why the respondent No.2 has not challenged the order of the Tribunal, Mr. Deo submitted that since the Tribunal by the impugned order reduced the punishment from one of removal to one of compulsory retirement and the respondent No.2 on such compulsory retirement would be entitled to his pension, the respondent No.2 did not challenge the order of the Tribunal.

5. In **B.C. Chaturvedi** (supra) the Supreme Court has held that the disciplinary authority or the appellate authority, being the facts finding authorities have exclusive power to consider the evidence with a view to maintain discipline and they are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. In the said decision, the Supreme Court has further held that the High Court / Tribunal, while exercising the power of judicial review, cannot normally substitute their own conclusion on penalty and impose some other penalty, but if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court / Tribunal, it would appropriately mould the relief, either directing the disciplinary / appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

6. In **Union of India & Another vs. G. Ganayutham** (supra) the Supreme Court considered the law with regard to proportionality of punishment both in the U.S. and in England as well as in India and finally came to conclusion that the position in our country in Administrative Law is that the Courts / Tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or the administrative authority and the secondary judgment of the Court is to be

based on Wednesbury and CCSU principles to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority. Para 31 of this judgment of the Supreme Court, which is relevant is quoted herein below:

> "31. In such a situation, unless the Court / Tribunal opines in its secondary role, that the administrator was, on the material before him, irrational according to Wednesbury or CCSU norms, the punishment cannot be quashed. Even then, the matter has to be remitted back to the appropriate authority for reconsideration. It is only in very rare cases as pointed out in B.C. Chaturvedi's case (1995 AIR SCW 4374) that the Court might, - to shorten litigation – think of substituting it own view as to the Quantum of punishment in the place of the punishment awarded by the competent authority."

In para 27 of the judgment in **Canara Bank vs. V.K. Awasthy** (supra) the Supreme Court has quoted the propositions of law as laid down in **Union of India vs. G. Ganayutham** (supra).

7. In **Kailash Nath Gupta vs. Enquiry Officer (R.K. Rai) Allahabad Bank & Others** (supra) the Supreme Court after discussing the law as laid down in **B.C. Chaturvedi** (supra) and **G. Ganayutham** and in other cases has held that the power of interference by the Court with the quantum of punishment is extremely limited, but when relevant factors are not taken note of, which have some bearing on the quantum of punishment, certainly the Court can direct reconsideration or in an appropriate case to shorten the litigation, indicate the punishment to be awarded.

8. Coming to the facts of the present case, paragraphs 5 & 6 of the order of the Tribunal which have been quoted above would show that the factors which have been taken into consideration by the Tribunal in interfering with the order of punishment of removal passed by the disciplinary authority is that besides respondents No.2, other superior officers like Sr. D.E.N., D.E.N., A.E.N. and 4 APWI are also responsible.

But these findings that superior officers like Sr. D.E.N., D.E.N., A.E.N. and 4 Junior PWIs were also responsible along with respondent No.2, are not based on any materials in the record collected in the departmental enquiry. In exercise of the power of judicial review the High Court or the Tribunal cannot record fresh finding of facts which are not part of the record of the disciplinary proceedings. The power of the High Court / Tribunal is to only examine the order passed by the disciplinary authority or the appellate authority on the basis of materials which formed part of the departmental enquiry. If in the given case, the High Court or the Tribunal is of the view that certain further facts need to be inquired into, the High Court or the Tribunal can remit the matter back to the disciplinary authority for re-enquiry on those facts, but while exercising the power of judicial review the High Court or the Tribunal cannot act as the disciplinary authority or the appellate authority and record its own finding of facts on the basis of materials placed before the High Court or Tribunal. As has been clarified in the case of **B.C. Chaturvedi** (supra) the disciplinary and on appeal the appellate authority, being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. Even otherwise, the fact that the other officers were also responsible along with respondent No.2 in respect of the two charges against respondent No.2 cannot be a ground for reducing the quantum of punishment imposed on respondent No.2. The respondent No.2 has been found guilty of the two charges in the departmental enquiry and the findings in the enquiry report have been accepted by the disciplinary authority. The two charges quoted above are certainly grave charges and the penalty of removal from service cannot be held to be shocking to judicial conscience or irrational or arbitrary and cannot be interfered with as per the aforesaid decisions of the Supreme Court. In our considered opinion, unless the findings of the disciplinary authority with regard to the guilt of respondent No.2 on the two charges were set aside, the Tribunal could not possibly reduce the quantum of punishment from one of removal to that of compulsory retirement.

9. It has, however, been submitted by Mr. Deo, learned counsel appearing for respondent No.2 besides the challenge to the quantum of punishment, the respondent No.2 had raised various other grounds

complaining of violation of principles of natural justice and irregularities in the departmental enquiry which have not been considered by the Tribunal. We have perused the records of the Tribunal which have been produced before us and we find that in para 5 of the Original Application the respondent No.2 has detailed various grounds including violation of D & A Rules and the principles of natural justice in the departmental enquiry. By virtue of the impugned order of the Tribunal the respondent No.2 would have been entitled to pension and perhaps for this reason he has not challenged the impugned order of the Tribunal. We are of the view that in the ends of justice, the matter should be remanded back to the Tribunal for a fresh decision in accordance with law on the grounds which have not been considered by the Tribunal.

10. For the reasons stated above, we set aside the impugned order dated 22.09.1999 of the Central Administrative Tribunal, Jabalpur Bench, Jabalpur in O.A.no.456 of 1991 and remit the matter back to the Tribunal for fresh hearing and decision in accordance with law on the grounds not considered by the Tribunal. Since this is an old case, the Tribunal will do well to complete the hearing and finally dispose of the matter within four months from the date of receipt of certified copy of this order.

Sd/-
Chief Justice

Sd/-
Satish K. Agnihotri
Judge